

Exhibit 327

(Filed Under Seal)

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1 ** H I G H L Y C O N F I D E N T I A L **

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Civil Action No. 1:15-cv-07488-CM

5 -----x

6

7 IN RE NAMENDA DIRECT PURCHASER

8 ANTITRUST LITIGATION

9

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10 July 27, 2017

11 9:59 a.m.

12

13 Videotaped Deposition of AMNEAL

14 PHARMACEUTICALS LLC by KAPIL GUPTA, taken

15 by Defendants, pursuant to 30(b) (6) Notice,

16 held at the offices of Norris McLaughlin &

17 Marcus, P.A, 400 Crossing Boulevard,

18 Bridgewater, New Jersey, before Todd

19 DeSimone, a Registered Professional

20 Reporter and Notary Public of the State of

21 New Jersey.

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<p>1 Q. And what did you guys talk 2 about?</p> <p>3 MS. STRANG: I would just like 4 to caution the witness not to reveal any 5 legal advice that he may have received from 6 Ken Cappel, who was an attorney at Amneal.</p> <p>7 MR. ADAM: Fair enough. I'm 8 definitely not asking about those kind of 9 communications.</p> <p>10 MS. STRANG: So maybe we can 11 get to that one in the context of actual 12 questions as opposed to him telling you 13 right now everything he learned from Ken.</p> <p>14 MR. ADAM: That's fair.</p> <p>15 Q. And who did you speak to from 16 Validation?</p> <p>17 A. I spoke to Vikrant Bendale.</p> <p>18 Q. How do you spell that last 19 name?</p> <p>20 A. V-i-k -- last name is Bendale, 21 B-e-n-d-l-e -- d-a-l-e.</p> <p>22 Q. And what did you talk to him 23 about with respect to validation?</p> <p>24 A. I spoke to him regarding when 25 did we start planning for the validations,</p>	<p>Page 10</p> <p>1 testimony today is on behalf of Amneal, 2 correct?</p> <p>3 A. That's correct.</p> <p>4 Q. You are currently employed at 5 Amneal. How long have you been there?</p> <p>6 A. I started with Amneal in Amneal 7 India in 2012.</p> <p>8 Q. And what's your current role?</p> <p>9 A. I look after the business 10 development and portfolio management in 11 Amneal.</p> <p>12 Q. And what does that entail?</p> <p>13 A. Primarily it's new product 14 selection and managing the current in 15 development pipeline.</p> <p>16 Q. And how long have you been 17 doing that?</p> <p>18 A. Eight years now, in total. 19 That includes outside of Amneal and Amneal.</p> <p>20 Q. And how long have you been 21 doing it at Amneal?</p> <p>22 A. Over four years.</p> <p>23 Q. Have you held any other 24 positions at Amneal?</p> <p>25 A. Yeah, when I was recruited, I</p>
<p>1 when did we start buying the material for 2 the validations and the launch, and were 3 there any problems related to the 4 manufacturing or the validations.</p> <p>5 Q. And did you speak to anyone 6 other than these three individuals in 7 preparing for your deposition, aside from 8 your lawyers?</p> <p>9 A. Yes, I did. I spoke to API 10 Purchase Group also, and specifically Krupa 11 Kamdhar.</p> <p>12 Q. Can you spell that one again 13 for me, please.</p> <p>14 A. First name is K-r-u-p-a, last 15 name is Kamdhar, K-a-m-d-h-a-r.</p> <p>16 Q. Did you bring any documents 17 with you today to the deposition?</p> <p>18 A. No, I didn't.</p> <p>19 Q. After speaking to these various 20 individuals at Amneal, are you comfortable 21 today testifying regarding the topics that 22 the parties have agreed upon with respect 23 to the scope of this deposition today?</p> <p>24 A. Yes, I am.</p> <p>25 Q. And you understand that your</p>	<p>Page 11</p> <p>Page 13</p> <p>1 was assistant general manager, and then now 2 I have moved to Amneal U.S., and now I am 3 senior manager, but looking after the same 4 business development and portfolio 5 management.</p> <p>6 Q. And how did your 7 responsibilities change from assistant 8 general manager to, I believe the 9 business -- sorry, senior manager? Sorry.</p> <p>10 A. Not necessarily -- it's just 11 designation change because of the location, 12 but the responsibilities in totality 13 remains the same.</p> <p>14 Q. Prior to working at Amneal, you 15 said you did similar work. Where was that 16 at?</p> <p>17 A. Prior to Amneal, I was with 18 Zydus Cadila.</p> <p>19 Q. And what was your title at 20 Zydus?</p> <p>21 A. I was senior manager, business 22 development and portfolio.</p> <p>23 Q. So same types of 24 responsibilities, selecting products, 25 product pipeline?</p>

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[REDACTED]	Page 58 1 A. That's correct. 2 Q. And that's your understanding, 3 too, correct? 4 A. Yes. 5 Q. Do you know what a Paragraph IV 6 filer is? 7 A. Yes. 8 Q. Can you just give me a 9 high-level overview of what a Paragraph IV 10 filer is? 11 A. If an ANDA filer chooses to -- 12 chooses to challenge the brand company's 13 patents, and those are listed in Orange 14 Book, which is FDA Orange Book, then it 15 goes under the Paragraph IV certification. 16 Any ANDA filer has to certify 17 Paragraph I, II, III, or IV to the Orange 18 Book listed patents. So Paragraph IV means 19 the generic company is challenging either 20 the validity or the noninfringement of 21 those listed patents. 22 Q. Do you know if Amneal was a 23 first filer? Sorry, back up. 24 Do you know -- so Amneal was a 25 Paragraph IV filer, correct?	Page 60
[REDACTED] 7 Q. You can put that document 8 aside. 9 I'm shifting gears a bit here 10 to kind of the regulatory side of Amneal's 11 involvement with generic Namenda. I 12 understand that this is not exactly in your 13 wheelhouse, but I'm going to ask you a 14 couple of questions about these documents. 15 If anything I'm asking you is kind of 16 beyond what you understand about the 17 regulatory side of things, just speak up, 18 okay? 19 A. Sure. 20 Q. Let's turn to what's Exhibit 3. 21 We don't need to spend much time on this. 22 I just wanted to confirm with 23 you that the date of Amneal's, and 24 Interpharm here, but ultimately Amneal's 25 ANDA, is 10-16-2007; is that correct?	Page 59 Page 61 1 A. Yes. 2 Q. Do you know if Amneal was a 3 first filer? 4 A. Amneal was one of the first 5 filers. 6 Q. And what does that mean, to be 7 a first filer? 8 A. So FDA -- the Hatch-Waxman law 9 says that whoever files first as a 10 Paragraph IV will be awarded, and if it 11 succeeds in the litigation, gets 180 days 12 of exclusivity. 13 MR. ADAM: Let me mark this as 14 Exhibit 7. 15 (Amneal Exhibit 7 marked for 16 identification.) 17 Q. Mr. Gupta, do you recognize 18 this document? 19 A. Yes. 20 Q. What is it? 21 A. This is a final approval letter 22 from FDA to Amneal. 23 Q. And in the top left corner, it 24 has ANDA 090041. That's the 25 Interpharm/Amneal ANDA for generic Namenda,	Page 61

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<p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And I will represent to you</p> <p>4 that I didn't -- I didn't get this from</p> <p>5 your production. I pulled this down from</p> <p>6 the FDA website myself, or my colleague</p> <p>7 did.</p> <p>8 And if you turn to the end, the</p> <p>9 signature is dated April 10th, 2015. Do</p> <p>10 you see that? It is an electronic</p> <p>11 signature stamp on the right.</p> <p>12 A. That's correct.</p> <p>13 Q. You don't have any reason to</p> <p>14 believe that date is not correct, right?</p> <p>15 A. Absolutely no reason.</p> <p>16 Q. If you flip to the top of the</p> <p>17 second page, this paragraph coming from the</p> <p>18 FDA confirms I believe what you just told</p> <p>19 me, that Amneal was one of the first ANDA</p> <p>20 applicants to submit a complete ANDA and</p> <p>21 was therefore a first filer and entitled to</p> <p>22 180 days of exclusivity, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. You understand that Amneal</p> <p>25 could share that 180 days with other first</p>	Page 62	Page 64
<p>1 filers, correct?</p> <p>2 MS. STRANG: Objection, just to</p> <p>3 the extent that calls for a legal</p> <p>4 conclusion. You can answer.</p> <p>5 MS. LEGER: Same objection.</p> <p>6 A. That's correct.</p> <p>7 Q. You can put that aside.</p> <p>8 Do you know what tentative</p> <p>9 approval is?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And what is tentative approval?</p> <p>12 A. If FDA completes the review of</p> <p>13 an ANDA, and ANDA applicant has not either</p> <p>14 reached a final outcome of the litigation,</p> <p>15 if they are litigating on the patents, then</p> <p>16 FDA gives -- FDA confirms that the review</p> <p>17 at FDA is completed for an ANDA, and they</p> <p>18 give a tentative approval, until the --</p> <p>19 until both the parties, ANDA filer and</p> <p>20 brand company, resolves the patent</p> <p>21 litigation.</p> <p>22 Q. Amneal, or any other company</p> <p>23 for that matter, cannot launch their</p> <p>24 product with only tentative approval,</p> <p>25 correct?</p>	Page 63	Page 65

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<p>1 Q. In the column for 2015, it 2 still says about [REDACTED]; is that right? 3 A. That's correct. 4 Q. But we are working from July 5 2015 entry date now as opposed to a January 6 2015 entry date, right? 7 A. Yes. 8 Q. So give or take, this 9 projection is, I'm not a math guy, but 10 roughly [REDACTED] what the previous projection 11 was from 2014, correct? 12 A. Yes. 13 Q. You can put that aside. 14 These projections are based on, 15 you know, Amneal's best assessment of the 16 market at the time they are making the 17 projection, right? 18 A. That's correct. 19 Q. These projections, they are not 20 guesses, they are based on information 21 filtered up to your folks in the 22 Forecasting Department, correct? 23 A. That's correct. 24 Q. I will represent to you that I 25 looked through all of these forecasts and I</p>	Page 90	<p>1 speak up. 2 MS. STRANG: Sounds good. 3 Q. You are aware that Amneal 4 produced its generic Namenda IR sales data 5 in this case; is that right? 6 A. Yes. 7 Q. Have you reviewed that sales 8 data in any way? 9 A. No. 10 Q. So I'm going to mark this 11 document for identification purposes and 12 authentication purposes. It is just a 13 print-up of the sales data. I'm only going 14 to mark one. I just want to put it on the 15 record. I don't think I need to pass it 16 out. I think we all understand what this 17 is. 18 This is Amneal Exhibit 13. 19 (Amneal Exhibit 13 marked for 20 identification.) 21 Q. So you are familiar with the 22 sales data produced in this case, correct? 23 A. Yes. 24 Q. This sales data is sales data 25 that is kept in the regular course of</p>	Page 92
<p>1 did not see an entry date estimated earlier 2 than January 2015. Is that surprising to 3 you? 4 A. No. 5 Q. To your knowledge, Amneal had 6 no plans of launching a generic Namenda 7 product earlier than January 2015, correct? 8 A. That's correct. 9 MR. ADAM: It is a little after 10 12. Do you want to grab lunch now? I 11 probably have 25 minutes or so left. 12 MS. STRANG: I think it might 13 make sense to either take a break and then 14 keep going before lunch or to just finish 15 up before lunch if that works for you guys. 16 Do you need a break? 17 THE WITNESS: I'm good. 18 MR. LETTER: So, in other 19 words, lunch between when we start and 20 after he asks questions? 21 MS. STRANG: If we can time 22 that right, that will probably be a good 23 idea. 24 MR. ADAM: And if I'm going 25 long and we need to take a break, someone</p>	Page 91	<p>1 business at Amneal, correct? 2 A. That's correct. 3 Q. Do you know from reviewing this 4 sales data whether or not Amneal sells its 5 generic Namenda product to the two direct 6 purchaser plaintiffs in this case, J.M. 7 Smith, or Smith Drug, and Rochester Drug? 8 A. I'm not aware. 9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 15 You don't have any reason to 16 believe that's not accurate, do you? 17 A. I don't have any reason. 18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 24 You don't have any reason to 25 believe that's not accurate, do you?</p>	Page 93

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<p>1 to familiarize yourself, that's fine. It's 2 the top e-mail that I'm looking at. 3 (Witness perusing document.) 4 A. Okay. 5 Q. This is a February 4th, 2015 6 e-mail from Tramara Dam at the FDA, and 7 that's an individual we have seen before on 8 this FDA correspondence, right? 9 A. Yes. 10 Q. And this e-mail is to Patel 11 Alpesh. Who is that? 12 A. That is another vice president 13 in Regulatory Affairs. 14 [REDACTED]</p>	<p>Page 110</p> <p>1 Q. Do you recognize this document? 2 A. Yes, I do. 3 Q. And what is it? 4 A. It is a settlement agreement 5 between Forest and Amneal. 6 Q. And this is a Forest Bates 7 number, FRX-AT-000218. This is the 8 settlement agreement as well as the license 9 agreement between Forest and Amneal. 10 Have you reviewed this document 11 before? 12 A. Yes. 13 Q. I want to flip to page ending 14 238, and I'm looking specifically at 15 Section 2.5. Are you there? 16 A. Yes, I am. 17 Q. And this is a section on 18 litigation expenses related to the 19 settlement, correct? 20 A. Yes. 21 Q. And it says here "Amneal has 22 represented that its attorneys' fees and 23 costs to date in this action have exceeded 24 [REDACTED]"; is that correct? 25 A. That's correct.</p> <p>Page 112</p>
<p>1 Did I read that right? 2 A. Yes. 3 Q. So here the FDA is again 4 communicating to Amneal that pediatric 5 exclusivity for the '703 patent applies to 6 Amneal's ANDA product for generic Namenda, 7 correct? 8 MR. LETTER: I object to the 9 form. 10 A. Yes. 11 MR. ADAM: Let's mark this as 12 Exhibit 16. 13 MS. STRANG: Before we get 14 started on that other document, are you 15 almost wrapping up, or do you think it 16 would make sense to take our lunch break 17 now? 18 MR. ADAM: About ten minutes, 19 probably. 20 MS. STRANG: Are you okay to 21 keep going? 22 THE WITNESS: Yeah. 23 MS. STRANG: Okay. 24 (Amneal Exhibit 16 marked for 25 identification.)</p>	<p>Page 111</p> <p>1 Q. So this is a representation 2 from Amneal to Forest that its litigation 3 costs have not exceeded [REDACTED], correct? 4 A. Sorry, can you please rephrase? 5 Q. Sure. This is a representation 6 from Amneal to Forest that its attorneys' 7 fees and costs to date have exceeded 8 [REDACTED], correct? 9 A. Yes. 10 Q. Do you know how much more they 11 were? 12 A. What I learned from Ken was 13 around [REDACTED] 14 Q. And it says, if you go a little 15 farther down, "Given that this Settlement 16 Agreement and License Agreement willfully 17 resolve the action, plaintiffs shall pay 18 Amneal [REDACTED] to defray a portion of the 19 paid attorneys' fees and costs that Amneal 20 has already expended in the action," 21 correct? 22 A. That's right. 23 MR. ADAM: I want to mark 24 Exhibit 17. 25 (Amneal Exhibit 17 marked for</p> <p>Page 113</p>

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<p>1 identification.)</p> <p>2 Q. Let me know when you've had a</p> <p>3 chance to look at that.</p> <p>4 (Witness perusing document.)</p> <p>5 A. Yeah.</p> <p>6 Q. This doesn't have a Bates</p> <p>7 number on it, but I will represent to you</p> <p>8 this was produced in Amneal's production.</p> <p>9 Do you know what this document</p> <p>10 is?</p> <p>11 A. Yes.</p> <p>12 Q. And what is it?</p> <p>13 A. This is a litigation expense</p> <p>14 report for Namenda IR tablets.</p> <p>15 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Page 114</p> <p>1 Q. You can answer.</p> <p>2 A. That's correct.</p> <p>3 Q. Let's go back to the settlement</p> <p>4 agreement for a minute. It is Exhibit 16.</p> <p>5 A. Okay.</p> <p>6 Q. I want to go to page 236, in</p> <p>7 the launch date section.</p> <p>8 A. Okay.</p> <p>9 Q. 1.14. The '703 patent was set</p> <p>10 to expire on April 11th, 2015, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And with pediatric exclusivity,</p> <p>13 the six-month period tacked on, Forest</p> <p>14 could have sold Namenda IR safe from any</p> <p>15 generic competition until October 11th,</p> <p>16 2015, correct?</p> <p>17 MR. LETTER: I object to the</p> <p>18 form.</p> <p>19 A. Yes.</p> <p>20 Q. So reading this launch date</p> <p>21 scenario here, it is giving two scenarios,</p> <p>22 both of which allow three months earlier</p> <p>23 entry.</p> <p>24 Under either one of these</p> <p>25 scenarios, Amneal was able to enter the</p>
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Page 115</p> <p>1 market three months earlier than it</p> <p>2 otherwise would have been able to, correct?</p> <p>3 MR. LETTER: I object to the</p> <p>4 form.</p> <p>5 A. Yes.</p> <p>6 Q. I also want to point you to the</p> <p>7 definition of '703 patent on page 235, on</p> <p>8 the other side of the document.</p> <p>9 The definition of '703 patent</p> <p>10 here includes any extensions and pediatric</p> <p>11 exclusivities, correct?</p> <p>12 A. That's correct.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>12 A. That's correct.</p> <p>13 Q. Do you know what stage in the</p> <p>14 litigation the parties were at when this</p> <p>15 settlement was executed?</p> <p>16 A. No, I'm not sure.</p> <p>17 Q. I will represent to you that it</p> <p>18 was before fact discovery had even closed</p> <p>19 in the case.</p> <p>20 So it's fair to say had Amneal</p> <p>21 and Forest continued litigating, the number</p> <p>22 on this Exhibit 17 would have gone up</p> <p>23 significantly, correct?</p> <p>24 MS. LEGER: Objection to form</p> <p>25 and foundation.</p>	<p>Page 117</p> <p>12 Q. And we talked about this</p> <p>13 earlier, I think, but you're not aware of</p> <p>14 any pushback, I guess, from Amneal to</p> <p>15 Forest regarding the pediatric exclusivity</p>

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1 provision in this agreement, are you?	1 12:37. We are going off the record. This
2 MS. STRANG: Objection, form,	2 will end media unit number two.
3 foundation.	3 (Luncheon recess: 12:37 p.m.)
4 A. Can you please rephrase?	4
5 Q. Sure. I believe earlier you	5
6 testified that there weren't communications	6
7 back and forth between Forest and Amneal	7
8 regarding pediatric exclusivity; is that	8
9 right?	9
10 A. Yes.	10
11 Q. Now, let's turn to the pages	11
12 ending 239 and 240, and I'm specifically	12
13 looking at Section 4.3.	13
14 Have you read through these --	14
15 this provision before, Section 4.3?	15
16 A. Yes.	16
17 Q. And do you understand Section	17
18 4.3 as well as 4.4 and 4.5 to be MFN	18
19 clauses or acceleration clauses?	19
20 A. Yes, I do understand	20
21 acceleration clause.	21
22 Q. And that means if any other	22
23 generic is able to launch, the entry date	23
24 for Amneal accelerates to that date, right?	24
25 A. That's correct.	25
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1 Q. Including a provision like this	1 A F T E R N O O N S E S S I O N
2 in the settlement agreement is in Amneal's	2 1:24 p.m.
3 independent best interest; is it not?	3 K A P I L G U P T A, resumed.
4 A. Yes.	4 THE VIDEOGRAPHER: The time is
5 Q. Because it assures that Amneal	5 1:24. We are back on the record. This
6 has the earliest entry possible, correct?	6 will be the start of media unit number
7 A. That's correct.	7 three.
8 Q. This settlement agreement that	8 EXAMINATION BY MS. LEGER:
9 we're looking at here, this is the result	9 Q. Good afternoon, Mr. Gupta.
10 of back and forth negotiations between	10 Thank you so much for being here today. My
11 Forest and Amneal, right?	11 name is Erin Leger, and I'm with the law
12 A. Yes.	12 firm of Smith, Segura & Raphael, and we are
13 Q. At no time during those	13 located in Louisiana, and I represent the
14 negotiations did Amneal communicate with	14 direct purchaser class plaintiffs in this
15 any of the other generic defendants	15 action, and I will have some additional
16 regarding the terms of any Namenda	16 questions to ask.
17 settlement agreements that they were	17 A. Sure.
18 negotiating, correct?	18 Q. So let's get started. At this
19 A. Yes.	19 time I would like to introduce for
20 MR. ADAM: I don't have	20 identification purposes what has been
21 anything else.	21 marked as Exhibit 18.
22 MS. STRANG: Okay. I think	22 (Amneal Exhibit 18 marked for
23 this is a good time to go off the record	23 identification.)
24 for lunch.	24 Q. Would you like to take a moment
25 THE VIDEOGRAPHER: The time is	25 to look at this document?

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1 Q. And is it correct that 2 according to this Paragraph IV 3 certification, that it was Interpharm's 4 belief the '703 patent was invalid, 5 unenforceable and/or would not be infringed 6 by the manufacture, use or sale of 7 Interpharm's generic product?	Page 126	Page 128
15 Q. And so it was Interpharm's 16 belief that the patent was infringed by 17 filing this Paragraph IV; is that correct?		
19 MR. ADAM: Objection, form, 20 calls for speculation.		
21 Q. And when Amneal acquired 22 Interpharm's generic Namenda IR ANDA in 23 2008, was Amneal aware that Interpharm was 24 engaged in litigation with Forest relating 25 to the '703 patent?		